

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JENNIFER M. KING, an Individual;

Plaintiff,

vs.

CATHOLIC HEALTH INITIATIVES, a Non-  
Profit Foreign Corporation Operating in  
Nebraska; and CHI NEBRASKA,

Defendants.

**8:18CV326**

**ORDER**

This matter is before the Court on the plaintiff's objections ([Filing No. 107](#)) to the order of the Magistrate Judge ([Filing No. 106](#)) on the plaintiff's motion to compel ([Filing No. 81](#)) and on the defendants' motion to strike the plaintiff's reply brief ([Filing No. 113](#)).

Although it may not be authorized under local rules, a reply brief is not prohibited either. The Court declines to strike the reply brief and has considered the parties' positions.

The plaintiff objects to the Magistrate Judge's discovery order, contending that the Magistrate Judge erred in limiting the retrieval of deleted electronically stored information ("ESI") to the emails of Lawrence Kelly; in failing to award the plaintiff the reasonable expenses she incurred in filing the Motion to Compel; in failing to make a finding of prejudice based on the defendants' failure to preserve evidence; and in failing to impose sanctions.

A magistrate judge's authority over nondispositive pretrial matters is governed by [28 U.S.C. § 636\(b\)\(1\)\(A\)](#). [Gomez v. United States](#), 490 U.S. 858, 873-74 (1989); see also [Fed. R. Civ. P. 72\(a\)](#). On review of a decision of the magistrate judge on a nondispositive matter, the district court may set aside any part of the magistrate judge's

order that it finds is clearly erroneous or contrary to law. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 72(a); see *Ferguson v. United States*, 484 F.3d 1068, 1076 (8th Cir. 2007). (“A district court may reconsider a magistrate judge's ruling on nondispositive pretrial matters where it has been shown that the ruling is clearly erroneous or contrary to law.”).

A decision is “‘clearly erroneous’ when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Chakales v. Comm’r of Internal Revenue*, 79 F.3d 726, 728 (8th Cir. 1996); see *Ferguson v. United States*, 484 F.3d 1068, 1076 (8th Cir. 2007). A decision is “contrary to the law” when it “fails to apply or misapplies relevant statutes, case law or rules of procedure.” *Knutson v. Blue Cross & Blue Shield of Minn.*, 254 F.R.D. 553, 556 (D. Minn. 2008) (quoting *Transamerica Life Ins. Co. v. v. Lincoln Nat’l Life Ins. Co.*, 592 F.Supp.2d 1087, 1093 (N.D. Iowa 2008)). A magistrate judge is afforded broad discretion in the resolution of nondispositive discovery disputes. *Bialas v. Greyhound Lines, Inc.*, 59 F.3d 759, 764 (8th Cir. 1995).

The Court has reviewed the parties’ submissions and finds the Magistrate Judge order is not clearly erroneous or contrary to law. Accordingly,

IT IS ORDERED:

1. The plaintiff’s objections ([Filing No. 107](#)) to the Magistrate Judge’s order ([Filing No. 106](#)) on her motion to compel ([Filing No. 81](#)) are overruled.
2. The defendants’ motion to strike ([Filing No. 113](#)) is denied.

Dated this 4th day of February, 2020.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge